in the case under discussion the alleged injury to the child was indirect and negligent. Even so, it is undeniable that medical science is so far advanced that there are some such injuries which can be unerringly traced by experts into postnatal deformities.[22] In another decade who can say that there shall not be many? At least give the infant his place in court. "It is for [him] to make out his case. If he does so, there is no difficulty. If he does not, there is no liability." [23]

RECENT CASES

AGENCY — PRINCIPAL'S LIABILITY FOR ACTS OF INDEPENDENT CONTRACTOR — INHERENTLY DANGEROUS UNDERTAKINGS. — The defendant employed an independent contractor to erect a brick building abutting on a sidewalk. No barriers or guards were placed to keep the public away. Before the mortar in the front wall had hardened, the wall fell and injured the plaintiff, who was passing on the sidewalk. There was evidence that walls of the kind being built for the defendant are likely to fall before the mortar has dried. *Held*, that the defendant is liable. *Privitt* v. *Jewett*, 225 S. W. 127 (Mo. App.).

An employer is ordinarily not liable for the torts of an independent contractor. *Bailey* v. *Troy & Boston R. R. Co.* 57 Vt. 252. But there are exceptions to the rule; as where the thing contracted for is unlawful, or a nuisance. *Ellis* v. *Sheffield Gas Consumers Co.*, 2 E. & B. 767. Again, if the employer owes a duty to the plaintiff, he cannot escape responsibility by delegating its performance. A clear example is where the duty is imposed by statute. *Gray* v. *Pullen*, 5 B. & S. 970. But the duty may arise differently. Thus where the work to be done is "inherently" dangerous, where injury will probably follow unless precautions are taken, it is said that the employer has a non-delegable duty to see that such precautions are taken. *Bower* v. *Peate*, 1 Q. B. D. 321; *Penny* v. *Wimbledon Urban District Council*, [1899] 2 Q. B. 72; *The Snark*, [1899] P. 74; *Johnson* v. *J. I. Case Threshing Machine Co.*, 193 Mo. App. 198, 182 S. W. 1089. The principal case seems fairly within this exception. Decided cases vary greatly in result. See *Wiggin* v. *St. Louis*, 135 Mo. 558, 37 S. W. 528; *City of Moline* v. *McKinnie*, 30 Ill. App. 419. But this is to be expected; for it is apparent that the language of the courts allows wide discretion in particular cases, and makes for a fair decision of individual controversies, rather than for a certain rule of law.

ANIMALS — TRESPASS ON REALTY BY ANIMALS — TRESPASS BY CHICKENS. — Defendant's chickens trespassed on plaintiff's land and did substantial damage. There was no evidence of negligence on defendant's part. Plaintiff's land was enclosed by a lawful fence; the fencing statute, however, made no mention of fowls. *Held*, that the plaintiff can recover. *Adams Bros.* v. *Clark*, 224 S. W. 1046 (Ky.).

"*Ils ont fait tort quand les bestes vont oustre la terre.*" Y. B. 7 Hen. VII, Mich.

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[22] It may be asked why need the child be a separate entity from the mother at the moment injury occurs. Let us suppose a severe injury to the mother through the defendant's negligence before the child is conceived. As a result the mother's physical condition, generally or specially, is so permanently altered that the subsequently conceived child is born deformed. Obviously this child can have no right of action. The causation is both too intricate and too remote; the opportunity for intervening causes is medically immeasurable.

[23] See 1 BEVEN, NEGLIGENCE, 3 ed., 75.